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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 KIRBY OFFSHORE MARINE PACIFIC,
9 LLC,

10 Plaintiff,

11 v.

12 EMERALD SERVICES, INC.,

13 Defendant.

No. C17-0224RSL

ORDER GRANTING IN PART
PLAINTIFF'S MOTION TO EXCLUDE
EXPERT TESTIMONY

14 This matter comes before the Court on "Plaintiff's Motion in Limine to Exclude Expert
15 Witness Patrick J. Hudson, Ph.D., P.E." Dkt. # 26.¹ In Daubert v. Merrell Dow Pharm., Inc., 509
16 U.S. 579 (1993), the Supreme Court charged trial judges with the responsibility of acting as
17 gatekeepers to prevent unreliable expert testimony from reaching the jury.² The gatekeeping
18 function applies to all expert testimony, not just testimony based on the hard sciences. Kumho
19 Tire Co. v. Carmichael, 526 U.S. 137 (1999).

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22 ¹ Pursuant to the undersigned's case management order, motions in limine are noted for
23 consideration on the second Friday after filing. Second Friday motions must be received by the opposing
24 party on or before the filing date, and responses are due on the Wednesday before the noting date. LCR
25 7(d)(2). Defendant's timeliness objection is overruled.

26 ² This matter will be tried without a jury, lessening the consequence of allowing ill-founded
opinions to be presented at trial. Nevertheless, inadmissible evidence should be excluded if at all
possible, and the parties have an interest in knowing what testimony will be heard as they prepare to
present their cases.

1 To be admissible, expert testimony must be both reliable and helpful. The reliability of
2 expert testimony is judged not on the substance of the opinions offered, but on the methods
3 employed in developing those opinions. Daubert, 509 U.S. at 594-95. In general, the expert's
4 opinion must be based on principles, techniques, or theories that are generally accepted in his or
5 her profession and must reflect something more than subjective belief and/or unsupported
6 speculation. Daubert, 509 U.S. at 590. The testimony must also be "helpful" in that it must go
7 "beyond the common knowledge of the average layperson" (U.S. v. Finley, 301 F.3d 1000, 1007
8 (9th Cir. 2002)) and it must have a valid connection between the opinion offered and the issues
9 of the case (Daubert, 509 U.S. at 591-92). Plaintiff, as the party offering Dr. Hudson as an
10 expert, has the burden of proving both the reliability and helpfulness of his testimony. Cooper v.
11 Brown, 510 F.3d 870, 942 (9th Cir. 2007).

12 Defendant does not challenge Dr. Hudson's experiential familiarity with (a) tank cleaning
13 procedures, gas-free inspections and certification protocols, and inspection of tanks after repairs
14 or (b) the general division of responsibilities between ship owners and contractors for inspecting
15 vessels and loading, securing, and unloading of cargo. Rather, defendant maintains that
16 testimony on these issues would be unhelpful because it is not particular to the type of vessel at
17 issue in this case, namely a petroleum tank barge. Dr. Hudson intends to offer the following
18 opinions:

19 (1) Closing the inspection blinds on the KAYS POINT was not within the scope of
20 defendant's services in April 2016 because the hatch covers had to be left off for
21 ventilation and inspection by the marine chemist.

22 (2) Brian McDonald, the tankerman on the KAYS POINT and plaintiff's
23 employee, signed the marine chemist's certificate which included a statement that
24 the inspection blinds were open.

25 (3) Mr. McDonald did not instruct defendant's employees to close the inspection
26 blinds, did not provide them the tool they would need to do so, had no evidence
that defendant's employees closed the inspection blinds, and did not inspect the
tanks himself.

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2 (4) Mr. McDonald “had the overall responsibility to ensure the safe loading and
3 unloading of fuel products in the tanks on the KAY POINT. This responsibility
4 included ensuring that the deep well inspection blinds were closed and sealed
before loading fuel into the tanks.”

5 Dkt. # 27-5 at 8-9.


6 The second and third opinions identified above are simply statements of fact for which no
7 scientific, technical or other specialized knowledge is necessary. The opinions are unhelpful: the
8 Court does not need the assistance of an expert to determine, based on the evidence presented,
9 whether Mr. McDonald signed the marine chemist certificate, what that certificate said, or
10 whether Mr. McDonald did or did not do certain things.

11 Dr. Hudson’s experiential knowledge regarding how ship owners, contractors, and
12 inspectors usually allocate responsibilities related to the provision of services, whether an
13 intervening inspection generally relieves the contractor of any further obligations, and whether
14 the ship owner has a duty of inspection and acceptance when the vessel is turned over may be
15 helpful in determining whether defendant’s employees should have returned to the tanks after
16 the marine chemist did his inspection or whether the intervening inspection released them from
17 any further duty in that regard. Similarly, the testimony may inform the Court’s understanding
18 and analysis of the duties Mr. McDonald owed in these circumstances. Plaintiff may, of course,
19 show that the usual division of responsibilities among maritime participants does not apply to a
20 petroleum tank barge and/or that specific contracts or regulations or industry practices govern
21 the relationships of the parties here. Such evidence would certainly lessen the persuasiveness of
22 Dr. Hudson’s generic testimony. Had plaintiff provided evidence of unique rules or practices
23 governing petroleum tank barges, the Court may have even concluded that Dr. Hudson’s
24 testimony regarding generalities was unhelpful in light of the specifics. As the record currently
25 stands, however, all plaintiff has shown is that the KAYS POINT is a petroleum tank barge,
26 from which it then argues that responsibilities aboard any other kind of vessel are simply

1 irrelevant. In the absence of any other standard, Dr. Hudson's testimony regarding general
2 maritime practices may be helpful and is therefore admissible.

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4 For all of the foregoing reasons, plaintiff's motion to exclude the testimony of Dr.
5 Hudson is GRANTED in part and DENIED in part. Dr. Hudson will not be permitted to testify
6 to simple facts regarding what did or did not happen on board the KAYS POINT in April 2016.
7 Although he is entitled to rely on facts to inform his opinions, he may not establish those facts
8 through his testimony. Dr. Hudson may, however, opine regarding the effect a mid-service
9 inspection has on a contractor's duties and/or a ship owner's responsibility for inspecting the
10 vessel after it is turned over by the contractor and before cargo is loaded.

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12 Dated this 31st day of January, 2018.

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15 Robert S. Lasnik
16 United States District Judge
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